IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 102 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHARDABEN W/O NARANBHAI JOITARAM - Applicant(s)
Versus
THAKOR LAXMANJI TEJAJI & 6 – Respondent(s)

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Appearance :
MR KIRIT I PATEL for Applicant(s) : 1,
MR MAHENDRA K PATEL for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 3 - 6.
MS HB PUNANI, ADDITIONAL PUBLIC PROSECUTOR for Respondent(s) : 7,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 12/04/2006

ORAL JUDGMENT

1. The applicant – original complainant is before this Court being aggrieved by judgment and order dated 13.01.2003 passed by the learned Additional Sessions Judge (3rd Fast Track Court), Mahesana in Sessions Case No.110 of 1999 whereby, the learned Judge was pleased to acquit the accused of the charge levelled against them under Sections 397, 447, 427, 506(2) and 114 of the Indian Penal Code.

2. The fact of the case, as is complained by the complainant are that on 16.06.1998 in the morning at about 9.00 O'clock, the complainant went to her field for collecting grass for animals. At that time, the owner of the field, adjoining to her field, came and snatched her golden chain weighting about 2 to 2.5 tolas thereafter, other accused also came with sticks and started beating the complainant, she sustained injuries on left thigh. She was also beaten in chest, her cloths were torned. She shauted for help, in response to which, one Patel Mangaldas Bhikhramdas came on the scene and rescued her. Thereafter, the accused persons left the place, but while leaving, they threatened the complainant that her family will be done to death. Thereafter, said Shri Patel Mangaldas Bhikhramdas took the complainant in S.T. Bus to Visnagar Government hospital and there she was admitted in female ward.

3. The prosecution has examined P.W.1, Exh.12 – Dr.Bhogilal Amtharam Patel (who had examined the injured complainant), P.W.2, Exh.15 – Dr.Kantilal Babaldas Patel (medical officer, who also had examined the injured complainant), P.W.3, Exh.18 – Shardaben Naranbhai Patel (complainant herself), P.W.4, Exh.20 – Fakirmohmmad

Chandbhai Mansuri (panch witness), P.W.5, Exh.22 – Gaurishankar Bhikhabhai Upadhyay (panch witness), P.W.6, Exh.23 – Sursangji Lilaji Thakor (panch witness), P.W.7, Exh.25 – Punjaji Okhaji (panch witness), P.W.8, Exh.26 – Shivabhai Mohanbhai Patel (panch witness), P.W.9, Exh.28 – Babubhai Ambalal Patel (panch witness), P.W.10, Exh.29 – Naranbhai Joitaram (husband of the complainant), P.W.11, Exh.30 – Somabhai Mohanbhai Patel (Investigating Officer), P.W.12, Exh.31 – Nagjibhai Vashrambhai Rabari – (police personnel who had recorded statement of the complainant), P.W.13, Exh.33 – Jagubhai Malabhai Bharwad (Investigating Officer). Besides these witnesses, the prosecution has also lead documentary evidence details of which are set out in paragraph No.8. The same are not reproduced here for the sake of gravity.

4. The learned Judge has taken all the pains to appreciate the documentary as well as oral evidence. The learned Judge has, on overall appreciation of the evidence, found that the evidence lead is not trustworthy. That there is a definite cause/motive for which the complainant has filed the present complaint and has roped in all the accused giving inconsistent versions in the complaint, the statement and the deposition.

In paragraph Nos.14 and 15 of the judgment and order, the learned Judge has appreciated the evidence of the complainant and has come to the conclusion that there are material contradictions in the same. The learned Judge has observed that the complainant has stated in her complainant – Exh.19 that she was given threats of very grave nature. She was told that her entire family will be done to death, but then this particular threat is not mentioned in her deposition at Exh.18. The learned Judge has observed that if any such threat would have been given to the complainant, the complainant would have mentioned in her deposition.

Similarly, the learned Judge has also recorded the discrepancies/contradictions in the version of the complainant regarding Patel Mangaldas Bhikhramdas. It is stated by the complainant in her deposition that Patel Mangaldas Bhikhramdas had come and had rescued the complainant. Said Shri Patel Mangaldas Bhikhramdas has expired, hence he is not before the Court to depose. The learned Judge has taken note of the fact that the police had recorded a statement of said Shri Patel Mangaldas Bhikhramdas on 17.06.1998. In that statement, said Shri

Patel Mangaldas Bhikhramdas had stated that he had not seen the incident. On the contrary, it is stated by him that, 'he was at his residence and when he came to know about the incident, he went to the field of the complainant and while he was going to the field of the complainant, when he was about one or two fields away from the field of the complainant, the accused met him on the way and one of the accused had informed him that Shardaben has gone to her house. Therefore, he had gone to her house'. The learned Judge has taken note of the contents of the statement of said Shri Patel Mangaldas Bhikhramdas as it is supported by the evidence of Shri Somabhai Mohanbhai Patel (Investigating Officer), Exh.30. He has supported this fact in his cross-examination and has stated that, “it is true that Patel Mangaldas Bhikhramdas was not an eyewitness; that at the time of incident, he was at his house”. The learned Judge has specifically recorded that thus, from deposition of the Investigating Officer, it is proved that Patel Mangaldas Bhikhramdas who is projected as a star witness by the complainant, was not present at the time of occurrence of the incident. The learned Jude after recording a caution to the effect that in such circumstances, the only evidence available is that of the complainant and that

evidence is required to be appreciated with necessary caution and has to keep in mind that the said evidence must be 'trustworthy'.

5. The learned Judge has appreciated the evidence of the complainant in detail. In her complaint, there are three accusations viz. snatching of the golden chain, beating by the accused persons and she being rescued by Patel Mangaldas Bhikhramdas.

The learned Judge on appreciation of the evidence has come to the conclusion that so far as snatching of the golden chain is concerned, the complainant has not produced any material in support of the same. So far as she being rescued by Patel Mangaldas Bhikhramdas is concerned, that is already discussed hereinabove and it is found that said Shri Patel Mangaldas Bhikhramdas, projected to be a star witness by the complainant, was not there at the time of occurrence of the incident. Then remains the beating of the complainant by the accused persons.

6. The learned Judge has appreciated the accusation about beating to the complainant by the accused persons,

in depth. The learned Judge has found that the evidence even on this aspect, is not 'trustworthy' inasmuch as, it is the say of the complainant that initially she was beaten **for 10 to 15 minutes** by accused No.1, i.e. Thakor Laxmanji Tejaji. If that is so, number of injuries, number of marks of injuries would have been numerous and not only three. The further say of the complainant is after accused No.1 snatched the golden chain and gave beatings for 10 to 15 minutes, other five accused armed with sticks came and gave stick blows to the complainant for 10 to 15 minutes. If this is true, the complainant would not have survived for filing of the com. With all this beatings, the complainant suffered only three injuries. The nature of injuries are mentioned by the doctors who examined the complainant. The opinion of the doctors in this regard is rightly taken into consideration by the learned Judge.

7. In the cross-examination of Dr.Bhogilal Amtharam Patel, P.W.1, Exh.12, it is stated that, “while giving history before me, the injured did not give the name of any of the assailants. It is true that when he inquired from the injured person, she only stated that she sustained injury by stick blows”. The doctor has then

stated in his cross-examination that, “it is true that if the surface of the stick is not plain, the mark of the injury will be longer”. He has further stated that if a person is hit with a blunt substance, injury which is mentioned in certificate dated 26/06 is possible”. In light of this, the learned Judge has rightly come to the conclusion that this is a case wherein only with a view to see that the score of the property dispute / dispute regarding right of way and removal of encroachment made by the complainant and her husband in Government gaucher land, which was required to be removed by the Panchayat authorities on an application filed by the accused persons, the present complaint is filed against the accused.

8. In view of the aforesaid discussion, this Court finds that the Criminal Revision Application does not have any merits. The same is dismissed. Rule is discharged.

(RAVI R.TRIPATHI, J.)

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